IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 5TH FEBRUARY 2007 / 16TH MAGHA 1928

CRP.No. 112 of 2007()

ORDER IN CMA.24/2005 DATED 10.10.06 of SUB COURT, PALA AGAINST ORDER IN I.A.219/05 IN OS.150/2004 DATED 08.09.05 of MUNSIF COURT, KANJIRAPPALLY

(IA 424/2005)

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REVN. PETITIONER: RESPONDENT/PLAINTIFF

T.P.DENNY, S/O.PRAKASH,
THAKADIYEL HOUSE, VADAKKUMBHAGOM KARA,
CHIRAKKADAVU VILLAGE, KANJIRAPPALLY TALUK,
KOTTAYAM DISTRICT.

BY ADV. SRI.TITUS MANI
SRI.S.SURAJ (PALATHANATHU)

RESPONDENTS: APPELLANT/DEFENDANT

E.R.SUNIL KUMAR,
S/O.RAGHAVAN, EATTACKAL HOUSE,
KIZHAKUMBHAGOM KARA, CHIRAKKADAVU VILLAGE,
KANJIRAPPALLY TALUK.

BY

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 05/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

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C.R.P.No.112 OF 2007

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DATED THIS THE 5TH DAY OF FEBRUARY, 2007

ORDER

Petitioner is the plaintiff in O.S.150 of 2004 on the file of Munsiff Court, Kanjirappally. Respondent is the defendant. Suit was decreed exparte on 28.9.2004. Summons on the defendant was not personally served. It was served by affixture on 12.7.2004. Respondent filed an application under Order IX Rule 13 of Code of Civil Procedure to set aside exparte decree on 15.2.2005. Another application to condone the delay under Section 5 of the Limitation Act was filed on 30.3.2005. The case of the respondent was that he was unaware of the suit or the decree and there was no service of notice by affixture also and immediately on getting the notice of the execution petition, the applications are filed. Respondent was examined as PW1. His wife was examined as PW2. The process server was examined as PW3. Learned Munsiff, on the evidence found that there was no sufficient cause to condone the delay or to set aside the exparte decree. Petition was dismissed. Respondent challenged the order before Sub

Court, Pala in C.M.A.24 of 2005. Learned Sub Judge, on reappreciation of facts, allowed the appeal and set aside the exparte decree and directed the parties to appear before the trial court on 20.11.2006. This revision petition is filed under Section 115 of the Code of Civil Procedure.

2. Learned counsel appearing for the petitioner was heard. The argument of learned counsel for the petitioner was that the definite case of respondent was that there was no service by affixture and the learned Munsiff on appreciation of evidence, disbelieved the case and learned Sub Judge should not have interfered with that order on the ground that the copy of the summons affixed does not disclose the number of the suit or the date of posting when there is no case for the respondent that because of want of these details he could not appear on the date when he was set exparte and so the order is to be set aside. Learned counsel argued that the irregularity in service of notice by itself is not a ground to set aside the exparte decree and therefore the order of the learned Sub Judge is to be dismissed.

3. The first posting of the suit was on 6.8.2004. The respondent was admittedly not served personally. Service was by affixture. As per the evidence of PW3 the process server, service of summons was on 12.7.2004. The specific case of respondent was that he was not aware of the suit at all and there was no service of summons by affixture. PW2, wife of petitioner was examined to support his case, apart from examining himself as PW1. Though learned Munsiff disbelieved the evidence of PWs 1 and 2, learned Sub Judge on verifying the copy of summons, affixed which was treated as sufficient service by the trial court, found that it does not contain the number of the suit or the posting date. The argument of learned counsel appearing for the petitioner is that original of that summons was not produced and respondent has no case that summons affixed on the door of the house does not contain the particulars and therefore he was not aware of the posting date and failed to appear and therefore the finding of learned Sub Judge is illegal and is to be set aside. I cannot agree with the argument. When there was no personal service of summons and service by

affixture is to be taken as sufficient service, unless the summons affixed disclosed the posting date and the number of the suit, any person seeing the affixed summons cannot appear before the court or contest the suit. Even if that fact is not taken as a specific ground in the application when respondent has contended that there was no affixture, unless it is established that there was proper affixture as provided under the rules, it cannot be treated as proper service. Service of summons proved by evidence of PW3 is affixture of a summons, which did not contain the suit number or the posting date. It cannot be treated as a valid service of summons as has been rightly held by learned Sub Judge. By the impugned order learned Sub Judge has only permitted respondent to have a decision on merits. Interests of justice does not warrant any interference in that order.

This petition is dismissed. Learned Munsiff is directed to dispose the suit as expeditiously as possible.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-